

**REMARKS**

Applicants gratefully acknowledge the Examiner for taking time to call Applicants' representative concerning the newly-cited reference to Elliot. As explained below, Applicants' representative attempted to explain to the Examiner that the terminology of the independent claims is not attempting to claim the dynamic process of allocation/ de-allocation. Rather, the present invention provides a technique of dynamically changing the dynamic process inherently occurring during the process of allocation/de-allocation. It achieves this change by incorporating at least one parameter in the Service Level Agreement that specifically defines parameter(s) that dynamically change the normally- dynamic allocation/de-allocation process.

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability. That is, the rejection currently of record indicates that the Examiner is somewhat confused as to the significance of the claim language. Applicants have attempted to clarify the claim language for the benefit of the Examiner.

It is further noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-48 are all of the claims pending in the present Application. The Examiner objects to claim 31 and 48.

Applicants gratefully acknowledge the Examiner's indication that claims 11, 14-16, 18, and 24-27 would be allowable if rewritten in independent format and that claims 31-39 and 48 would be allowable if rewritten to overcome the objection directed to them. Applicants decline to rewrite the above-identified claims at this time in independent format, since it is believed that the independent claims are fully allowable over the prior art of record, once the contents are understood.

Claims 1-10, 12-17, 10-38, and 40-48 stand rejected under 35 USC §103(a) as unpatentable over US Patent 6,459,682 to Ellessen et al., further in view of US Patent

5,700,173 to Gossler et al., US Patent 5,719,854 to Choudhury et al., and US Patent 5,892,754 to Kompella et al.

These rejections are respectfully traversed in view of the following discussion.

## **I. THE CLAIMED INVENTION**

As described and claimed, for example, by claim 1, the present invention is directed to a method for managing and controlling allocation and de-allocation of resources based on a guaranteed amount of resource and additional resources based on a best effort for a plurality of customers. Server resources are dynamically allocated for a plurality of customers, such that the resources received by a customer are dynamically controlled and said customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA). The service level agreement includes at least one parameter for re-defining dynamically the process of allocating and de-allocating the server resources.

The prior art of record fails to teach or suggest this concept of dynamic allocation of server resources as based on a service level agreement that includes one or more parameters that dynamically re-defines allocation and de-allocation.

An advantage of the present invention is that it allows the server resources' owner to develop a business contract that defines how the resources will be allocated/de-allocated/re-allocated in a simple explanation to customers and in a manner that dynamic allocation calculations are much simpler, since the conditions of dynamic allocation changes are defined by specific parameters that are included in the service level agreement.

That is, there is no need to expend tremendous calculation effort to attempt to optimize a very complicated problem (e.g., contrast the present invention with the calculations involved in Choudhury), if such allocation parameters are not used.

## **II. THE CLAIM OBJECTIONS**

The Examiner objects to claims 31 and 48 because he considers that the term "operation state M(i)" is not clearly defined.

Applicants submit that similar, if not identical, terminology is used in the specification at lines 6-7 of page 13, which lines refer back to the green belt area in Figure 4. As clearly described at lines 12-22 of page 10, which describes the green belt area, the symbology "(M,N,R)" is merely one exemplary embodiment for "operation state M(i)".

Accordingly, Applicants submit that, to one of ordinary skill in the art, there is no confusion and no need to further clarify the term "operation state M(i)" and respectfully request that the Examiner reconsider and withdraw this objection.

### III. THE PRIOR ART REJECTIONS

The Examiner alleges that US Patent US Patent 5,710, 854 to Choudhury, further in view of newly-cited US Patent 6,335,927 to Elliott et al., renders obvious claims 1-10, 12, 13, 17, 19-23, 28-30, and 40-47.

Applicants submit that the rejection currently of record fails to meet the initial burden of a *prima facie* rejection, for the following reasons.

First, it is noted that the Examiner seems to remain confused in an understanding of the basic concepts being addressed in the present invention and the terminology related to "dynamically allocating and de-allocating" in the independent claims. As Applicants representative attempted to clarify with the Examiner during the telephone interview dated March 2, 2004, the process "allocating and de-allocating resources" is inherently a dynamic process.

The descriptive "dynamically" in "dynamically allocating and de-allocating said server resources" would be redundant if it referred the inherently dynamic characteristic of allocation/de-allocation. Rather, the present invention teaches one technique to dynamically alter the process of allocation/de-allocation. It does so by defining at least one parameter that controls the dynamic process of allocation/de-allocation.

This parameter or parameters define how the dynamic process itself is to be dynamically changed in response to current conditions. Thus, contrary to the Examiner's perceived understanding, the present invention defines that a first dynamic process of allocation/de-allocation can be in effect at one time, and, later, due to changes in the demand,

the first dynamic process has been altered to become a second dynamic process of allocation/de-allocation.

Stated slightly differently, the present invention permits a second level of alteration for the inherently-dynamic process of allocation/de-allocation. Applicants have attempted to clarify this basic conceptual confusion by a wording change in the independent claims.

Second, the Examiner concedes that Choudhury fails to teach or suggest using a Service Level Agreement (SLA) that define conditions of dynamically allocating and de-allocating server resources. To overcome this deficiency, the Examiner relies upon newly-cited Elliot, pointing specifically to lines 38-43 of column 24 and to line 64 of column 40 through line 19 of column 41.

The Examiner alleges that one of ordinary skill in the art would be motivated to modify Choudhury so that allocation/de-allocation parameters "... could have been entered into a service level agreement, because Choudhury's system/method is solely targeted at maintaining a plurality of customers' QoS."

Applicants respectfully submit that the above-recited Examiner's motivation uses the wrong legal standard (e.g., "could be ...") to modify Choudhury would violate the guideline at MPEP §2143.01: "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination", (emphasis in MPEP itself).

Moreover, Applicants submit that Choudhury clearly proposes another technique for dealing with traffic, and it clearly does not involve a parameter in an SLA. More specifically, this reference addresses the admission of new customers. As clearly shown in steps 310-312 of Figure 3, the potential customer is subjected to a normal negotiation step 310 of receiving an alternate grade of service and, in step 312, is refused as being a new customer if the alternate grade is not acceptable.

Thus, Applicants submit that Choudhury clearly teaches against using a parameter to re-define allocation/de-allocation and, therefore, cannot even serve as a primary reference for the present invention, since it clearly teaches a principle of operation that would be changed if the Examiner's urged modification were to be incorporated.

Such change in principle of operation is clearly prohibited in MPEP §2143.01: "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE".

Finally, it is submitted that, even if Choudhury were to be modified as urged by the Examiner, based on the lines in newly-cited Elliott to which the Examiner points. That is, the description at line 64 of column 40 through line 19 of column 41 merely confirm Applicants' position that allocation/de-allocation is inherently a dynamic process. There is no suggestion whatsoever in these lines to incorporate a parameter having a purpose to alter the inherently-dynamic process itself, let alone a suggestion to do so in a service letter agreement.

Hence, turning to the clear language of independent claims 1, 40, 41, and 47, there is no teaching or suggestion of " ... said service level agreement including at least one parameter defining conditions of dynamically allocating and de-allocating said server resources."

For the reasons stated above, the claimed invention is fully patentable over the cited references.

Further, the other prior art of record has been reviewed, but it too, even in combination with Choudhury and Elliott, fails to teach or suggest the claimed invention.

#### **IV. FORMAL MATTERS AND CONCLUSION**

In view of the foregoing, Applicant submits that claims 1-48, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

S/N 09/559,065

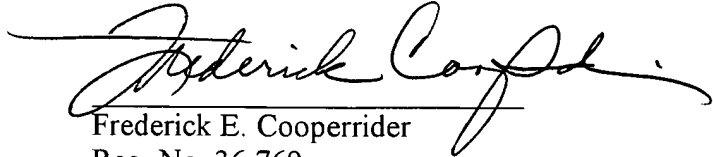
Docket: YOR919990479US1

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date:

8/9/04



Frederick E. Cooperrider

Reg. No. 36,769

**McGinn & Gibb, PLLC**

8321 Old Courthouse Road, Suite 200

Vienna, Virginia 22182

(703) 761-4100

**Customer No. 21254**